

REMARKS/ARGUMENTS

Claims 1-8 and 10-14 stand rejected, with claim 9 objected to in the outstanding Official Action. Claims 1-5 have been amended and newly written claim 16 offered for consideration. Accordingly, claims 1-14 and 16 remain in this application.

The Examiner's acknowledgment of Applicants' claim for foreign priority and receipt of the certified copy of the priority document is very much appreciated. Additionally, the Examiner's confirmation of PTO acceptance of the previously submitted formal drawings is appreciated. Finally, the Examiner's consideration of the prior art noted in Applicants' previously filed Information Disclosure Statement is appreciated.

Claims 1-4 stand rejected under 35 USC §102(b) as being anticipated by Feng (U.S. Publication 2005/0054172 – hereinafter “Feng II”). Feng II is a continuation-in-part of U.S. Publication 2005/0040432, now abandoned (“Feng I”). It is noted that the parent or Feng I published application was published on February 24, 2005, slightly earlier than Feng II's publication date of March 10, 2005. However, both Feng publication dates are after Applicants' PCT International filing date of November 8, 2004, which PCT application was in English and designated the United States.

As a result, the present national phase application is treated as having an effective U.S. filing date of the PCT International filing date, i.e., November 8, 2004. Both Feng applications, i.e., Feng I and Feng II, were published after the effective filing date of the present application. As a result, Feng is not available as a reference under 35 USC §102(b) because the invention was not patented or described in a printed publication in this or a foreign country or in public use or

on sale in this country more than one year prior to the date of the application for patent in the United States. Thus, Feng is not believed to be available as prior art under 35 USC §102(b).

In conjunction with the above, Applicants note the provisions of 35 USC §119 which specifically states “no patent shall be granted on any application for patent for an invention which has been patented or described in a printed publication in any country more than one year before the date of the actual filing of the application in this country” Notwithstanding the provisions of 35 USC §119, in 35 USC §363 entitled “International Application Designating the United States: Effect” it is stated that “an International application designating the United States shall have the effect, from its International filing date under Article 11 of the Treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in §102(e) of this Title.”

Thus, in accordance with §363, Applicants note that the present national phase application filed May 3, 2006 is based upon International PCT Application PCT/GB04/04722 which was filed November 8, 2004. The filing date of November 8, 2004 of the PCT International Application has the effect of “a national application for patent regularly filed in the Patent and Trademark Office.” The only exception to this statutory designation of the effect of International applications which designate the United State and which are in English is for documents asserted under §102(e). Neither of the Feng references are cited in the Official Action as prior art under §102(e).

Accordingly, neither Feng reference, with their later publication dates, are believed to be prior art under 35 USC §102(b) and therefore any further rejection of claims 1-4 thereunder is respectfully traversed.

Claims 1, 5 and 8 stand rejected under 35 USC §102(e) as being anticipated by Phillips (U.S. Publication 2005/0194613). Phillips, a co-inventor of the present application, has a §102(e) date of the PCT filing date, i.e., March 17, 2003. Applicants' undersigned representative has recently learned that the subject matter of the presently claimed invention was invented at least as early as September 2002. Accordingly, Phillips is not believed available as a reference against the present application under 35 USC §102(e).

Applicants enclose herewith a signed and dated Declaration under Rule 131 by European attorney Philip Davies confirming that he did indeed receive, review and understand the Invention Submission by the current co-inventors and a copy of the Invention Submission is attached to the Declaration. Applicants believe this showing of facts in the Declaration is sufficient to establish reduction to practice of the presently claimed invention prior to the §102(e) date of the Phillips disclosure, i.e., March 17, 2003.

The Invention Submission Receipt Form is evidence that someone other than the co-inventors read and understood the Submission at least as early as September 13, 2002 and is attached to the Invention Record written by the co-inventors Tim J. Phillips and Tim Ashley in the present application. It is submitted that this evidence is of such a character and weight as to establish reduction to practice prior to the Phillips §102(e) date of March 17, 2003, thereby obviating Phillips as prior art against claims 1 and 5-8. Therefore, any further rejection of claims 1 and 5-8 is respectfully traversed.

Claims 10, 11, 13 and 14 stand rejected under 35 USC §103 as being unpatentable over Feng in view of Bakalski (U.S. Publication 2006/0261888). As noted above, Feng is not

available as prior art against the present application and therefore without Feng, the obviousness rejection of claims 10, 11, 13 and 14 in view of Bakalski fails.

Claim 12 stands rejected under 35 USC §103 as unpatentable over Phillips. As noted above, Phillips is not available as a reference, as it has been sworn behind in view of the attached Declaration under Rule 131. Additionally, 35 USC §103(c) confirms that subject matter developed by another person qualifying as prior art only under subsections (e), (f) and (g) of §102 “shall not preclude patentability under this section where the subject matter in the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

It is noted that the assignee of the Phillips disclosure is QinetiQ Limited which is the identical assignee of the present application. Thus, both applications have been assigned to the same entity and Phillips, even if not sworn behind with the Rule 131 Declaration, would still not be available as a reference under the provisions of 35 USC §103 in view of §103(c). Accordingly, any further rejection of claim 12 is respectfully traversed.

The Examiner has indicated that claim 9 contains allowable subject matter and this notification is very much appreciated. Applicants have rewritten claim 9 in independent form (new claim 16) containing the limitations of claims 1 and 6, from which claim 9 previously depended. Thus, the independent form of claim 9 written as newly submitted claim 16 is believed to be in condition for allowance.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-14 and 16 are in condition for allowance and notice to that effect is respectfully requested. In the event the Examiner is of the opinion that a brief telephone

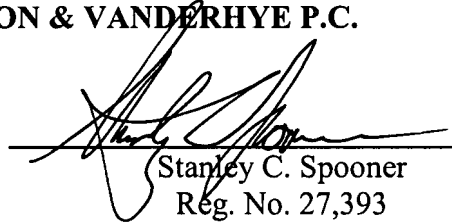
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or personal interview will facilitate allowance of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


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